

Topic 8: Notes on US trade policy and the WTO

US trade policy: a way-too-brief history

First 100+ years: tariffs used as industrial policy and as major revenue generator.

- High industrial tariffs were a significant contributor to North-South tensions leading up to the Civil War.
- By 1913 and introduction of federal income tax, reliance on tariffs for revenue became secondary.

Smoot-Hawley tariff, retaliation, and the Great Depression (early 1930s).

Cordell Hull and the negotiation of bilateral MFN trade agreements (late 1930s).

Post-WW2 global development policy and institutions (1940s-50s):

- The Marshall Plan and renewed fixed exchange rates under the “Bretton Woods system”.

Emergence of international institutions (late 1940s and continuing):

- World Bank and International Monetary Fund;
- GATT (International Trade Organization), the precursor to the WTO.

Major elements of “modern” US trade law

The 1962 Trade Expansion Act (enacted to approve the tariff cuts in the “Kennedy Round” and it also established the Trade Adjustment Assistance (TAA) Program).

Main provision: Section 232

- Permits unilateral imposition of tariffs (or other limits) to protect industries seen as important for defense if imports threaten national security.
- An investigation is done by US Dept. of Commerce. President can accept, reject, or modify the recommendations for trade protection.
- A major focus of the WTO rules is to limit this kind of intervention. Using it requires extensive investigation and demonstration of (1) the importance of the good for defense; (2) the potential that export sources could be disrupted; and (3) a sufficiently debilitated domestic production capacity.
- WTO members generally have such provisions (consistent with GATT Article V) but rarely used national security tariffs after 1995.
- Without question the US steel and aluminum tariffs (2018) fail these tests.
 - Interesting note: Sec 232 investigations are done by Dept. of Commerce and requires consultation with the Dept. of Defense. The Pentagon in this case said the tariffs were unnecessary.

Major elements of “modern” US trade policy

The Trade Act of 1974 (enacted to approve the tariff cuts in the “Tokyo Round”). Two major provisions:

1. Section 201 “safeguards” tariffs or the “escape clause”. “Escape” because they raise tariffs above bound levels agreed in the GATT/WTO. Tariffs or other import limits could be imposed temporarily if both of these conditions can be demonstrated:

- Imports cause or threaten to cause “serious injury” to a domestic industry producing “like products”;
- Imports must be a “substantial cause” of serious injury (important and not less than any other factor).

Safeguards are permissible under GATT Article XIX.

- Interesting question: why would parties who have agreed to tariff cuts need the ability to temporarily restrict imports?

Section 201 does not require a finding that foreign trade practices are “unfair”.

Investigation and recommendations done by USITC; again the President can choose any response.

US has not used 201 often because the criteria are hard to show. But some interesting examples:

- Tariffs on motorcycles raised from 5% to 50% in 1983 for 5 years (declining over time) to protect Harley-Davidson.
- Tariffs on steel raised from around 0.5% to 8-30% in March 2002, scheduled for 5 years. EU, Japan and others threatened to retaliate and filed a WTO dispute. WTO ruled against US (didn’t show injury) and authorized \$2 billion retaliation. US withdrew the tariffs in December 2003. A huge political controversy.
- The 30% solar panel tariffs in January 2018 were imposed under 201.

Major elements of “modern” US trade policy

2. Section 301: actions against unfair foreign trade or trade-distorting practices.

Permits the President to take any trade interventions (tariffs, quotas, WTO dispute) against a foreign policy that violates a trade agreement or is unjustified or unreasonable and is a burden to US commerce.

- What’s “unjustified or unreasonable”? That’s for USTR and the President to decide. USTR does an investigation, recommends some action, and the President can accept it or do anything else.
- A narrower provision: “Special 301” taken against countries that are unfair regarding US intellectual property rights.
- The current case against China is based on a 301 investigation and a finding of unfair practices regarding technology transfer, investment restrictions, and IPR violations.

This approach demonstrates “unilateralism” by the US in dealing with foreign trade barriers. Enacted at a time of increasing trade deficits and dissatisfaction with GATT dispute powers.

Many cases were launched in 1970s and 1980s, especially in IPR. Foreign countries hated this and filed numerous GATT disputes. A primary reason for negotiating the WTO to replace GATT was the US essentially agreed to stop using 301 (until now) in return for stronger dispute settlement at the WTO.

Major elements of “modern” US trade policy

Anti-dumping (AD) and countervailing duty (CVD) tariffs against foreign unfair dumping and export subsidies.

These laws go back to 1919 but were considerably strengthened in 1974 Trade Act and in later updates.

Dumping: the practice of a foreign firm selling its product in your market at a price that is either (1) lower than its home price or (2) lower than its average costs of production.

Why might dumping exist?

- Firms try to get rid of (temporary) excessive production;
- Firms try to act monopolistically to drive domestic firms out of the market, then raise prices there.
- “Equilibrium dumping” associated with different home and foreign price elasticities facing a firm with some power to set prices. Firms tend to charge lower prices abroad because demand there is more “elastic” and firms have limited pricing power.

Under US AD policy, USITC must find that dumping exists and there is “material injury” (a weaker standard than “serious injury”). If both are true then:

- Tariffs are levied against *specific firms* to cover the “dumping margin”.
- Tariffs remain in place until the dumping stops or domestic firms agree to a settlement.

The processes are similar in CVD but the tariffs are imposed against firms that received an export subsidy.

The World Trade Organization

Definition

The World Trade Organization is physically located in Geneva. That “Secretariat”:

- Sponsors negotiations over tariffs and other trade-related regulations, and
- Manages disputes legal disputes between countries about such policies.

But the WTO really is an agreement among member countries to abide by a set of mutually negotiated rules. The WTO began in 1995, built on the foundations of the GATT. Since 1995 many countries have joined, most importantly China in 2001. Membership now is 164 countries plus EU.

The WTO

Why do we need a WTO? (What are its essential roles?)

1. WTO serves as a "barter market" for exchanging market-access commitments. The political difficulty of making tariff cuts (concentrated pain, diffuse gain) means that acquiring foreign market access is essential for cutting your own tariffs.
2. Negotiations offer the ability for countries to trade market-access "concessions" across sectors.
3. WTO as a "code of conduct" among countries, or a "rules-based" system.
4. Disciplines the use of "beggar-your-neighbor" policies (prevents abuse of trading power). One example: smaller countries can use the dispute system to offset trade restrictions in larger countries.
5. Consultations and dispute resolution helps prevent tendencies of countries to mutually raise tariffs.

The WTO: 5 basic principles

1. WTO rules are *disciplines against government policies*, not business actions (except anti-dumping).
2. *Non-discrimination*.
 - *MFN* (efficiency; prevent abuse; raise costs of defecting)
 - *National Treatment* (efficiency; avoid disguised trade barriers)
 - Major exceptions: free-trade areas; special preferences for poor countries; regulatory actions taken to protect the environment and public safety.
3. Negotiate reciprocal “concessions” in market access.
 - Countries negotiate their “MFN” tariff rates, which they cannot raise (they are “bound”). So use of “safeguards” tariffs and AD and CVD tariffs means going above these rates under certain circumstances.
 - The WTO agreements include market access in regulatory areas: intellectual property rights (“TRIPS”), foreign direct investment (“TRIMS”), and trade in services (“GATS”).
 - There are also several agreements among subsets of countries on issues like government procurement, trade in digital goods, and trade in services.
4. Making markets more open and accessible (contestability through imports and FDI).
 - Elimination of quantitative restrictions (quotas and VERs) on trade.

The WTO: dispute settlement

5. Manage and sustain negotiated market access through dispute settlement procedures.
 - Country versus country lawsuits alleging "nullification and impairment" of access benefits due to some policy (usually violations of national treatment).
 - If the defendant country loses it is ordered to remove or modify the policy.
 - DS panels may award damages by authorizing retaliation through trade restrictions or other measures.

A few comments on dispute settlement:

1. The great majority of disputes involve a major country (US, EU, China, India) as either plaintiff or defendant.
2. About 2/3 of cases are settled before reaching a panel or appeal.
3. The US has won nearly every case it has brought to the WTO as plaintiff (91% of adjudicated issues). That's because governments file cases when they are sure they can win.
4. That means the US also loses most cases brought against it (about 80%). Nearly all of these are complaints about US anti-dumping procedures. And now there are 17 disputes about steel and aluminum tariffs. But there have been big ones on other issues.

WTO: existential threats

The WTO is under severe threat and it remains to be seen if it can survive or needs fundamental reform. Sources of threats:

1. With so many members it became increasingly hard to reach further rules on difficult regulatory questions. This is really why preferential trade agreements have become so common.
2. The binding nature of WTO disputes is seen by some as limits on national policy sovereignty. Some major examples:
 - The tuna-dolphin dispute between US and Mexico in 1980s and 1990s; ultimately a sound outcome.
 - The EU ban on importing beef treated with growth hormones; still an issue.
 - The US implemented a rule in 2000s requiring origin labels on beef; US lost that one.
 - Australia and Thailand require tobacco companies to label their goods essentially as poisons. WTO upheld these rules.
3. US opposition under Obama and especially Trump: perceived limits on domestic legal sovereignty. The US is now refusing to approve any new judges for appeals courts, which will end the dispute system if unchanged. And the US now threatens to withdraw from WTO, which would be a major disruption to the rules-based trading system.